

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3087 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT RAJYA TALATI-CUM- MANTRI MAHA MANDAL

Versus

DIST DEVELOPMENT OFFICER, RAJKOT & OTHERS

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Appearance:

MR PM THAKKAR for Petitioner

MR NN PANDYA for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, Gujarat Rajya Talati-cum-Mantri Mahamandal filed this petition before this Court wherein the prayer has been made that the direction may be given to the respondents that the Talati-cum-Secretaries who are sent for basic training of 3 -1/2 months during their service are entitled to their regular salary which they are

drawing at the time of training. The counsel for the petitioner contended that the Talati-cum-Secretaries who are sent for the aforesaid training are paid stipend of Rs.150/- p.m. and Miscellaneous expenses of Rs.20/- p.m. during the period of training and not the salary. This writ petition has been filed by the union and the person who has been sent for training has not made any grievance before this Court. In the service jurisprudence, it is difficult to appreciate the writ petition by the union in all the matters. The Supreme Court in the case of R.K.Jain V/s. Union of India reported in AIR 1993 SC 1769, has held that in service jurisprudence, it is settled law that it is for the aggrieved person i.e. non appointee to assail legality of the offending action. In the present case, the alleged offending action of non payment of full salary during the basic training has not been challenged by any of the Talati-cum-Secretary. Be that as it may, the counsel for the petitioner is unable to point out any provision from the service rules or from any resolution of the Government where it has been provided that the Talati-cum-Secretaries who have been sent for basic training will get the full salary during the period of training. The reference to the Rule 9(16)(c) of the Bombay Civil Service Rules though has been made in this Special Civil Application, but how this rule is applicable to the petitioner has not been established by the counsel for the petitioner. Under the said rule, the training period is to be treated as a duty, which does not mean that this class of persons have become entitled for full salary for the period of training. To protect the continuous service this provision has been made. In case the contention of the counsel for the petitioner is accepted, then this Court has to read in the aforesaid rule something what the rule making authority was not intending. If in case it would have been the intention of the rule making authority to give the full salary during the period of training then it would have been specifically provided therein. The counsel for the petitioner relying on the Government resolution dated 28th November, 1987 contended that the Government has now decided to give full salaries to the Talati-cum-Secretaries who had been sent for the basic training, and as such, it is a case of hostile discrimination. I do not find any substance in this contention also. The resolution dated 28th November, 1987 has been given effect to from 16-10-1987. This is an administrative order which cannot have any retrospective effect. Moreover, this order has not been given retrospective effect. Whosoever was sent for training on or after 16-10-1987 will get the benefit of this resolution and the persons who had been sent for

training much earlier to this resolution cannot be given benefit of the same. The Talati-cum-Secretaries who had been sent for training earlier to this resolution has come into force and after this resolution do not constitute one class and as such, there is no question of any discrimination as tried to be projected by the counsel for the petitioner. This writ petition is without any substance and the same deserves to be dismissed. Order accordingly. This Special Civil Application fails and the same is dismissed. The petitioner is directed to pay Rs.1000/- by way of costs of this writ petition to respondent no.1. Rule is discharged.

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